

D'Agata National Trucking Co. and Carolina National Trucking Co. and Jay Stuart Goldstein.
Case 4-CA-11931

November 18, 1981

DECISION AND ORDER

**BY CHAIRMAN VAN DE WATER AND
MEMBERS JENKINS AND HUNTER**

Upon a charge filed on March 11, 1981, by Jay Stuart Goldstein, an individual, herein called the Charging Party, and duly served on D'Agata National Trucking Co. and Carolina National Trucking Co., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 4, issued a complaint on April 29, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent failed to file an answer to the complaint.

On August 3, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on August 7, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the

answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing issued on April 29, 1981, and served on Respondent by registered mail, return receipt dated April 29, 1981, specifically states that, unless an answer to the complaint is filed within 10 days from the service thereof "all of the allegations in the complaint shall be deemed admitted to be true and may be so found by the Board." As no answer was filed, counsel for the General Counsel, on August 3, 1981, filed a Motion for Summary Judgment. On August 7, 1981, the Board issued a Notice To Show Cause why the General Counsel's motion should not be granted and, on August 21, 1981, Respondent filed a response thereto.

Respondent's response to the Notice To Show Cause argues that the General Counsel's Motion for Summary Judgment should not be granted. Respondent contends that, in mid-April 1981, as a result of Board Agent Berger's urgings, it decided to pursue a settlement and commenced negotiations with Berger acting as intermediary. However, on April 29, the Regional Director issued a complaint and notice of hearing. Respondent claims that it did not consult an attorney at that time since it still believed that a settlement would be reached.

Respondent further asserts that, a few weeks later, Board attorney Rosenberger contacted Respondent's controller, Goldberg, and told him that Respondent ought to answer the complaint. However, Respondent states that it did not do so because it believed that the case had been resolved. Shortly after that conversation on June 24, 1981, the proposed settlement was rejected by the Charging Party. Immediately thereafter, Respondent contends, Goldberg called Rosenberger who informed him that she had not yet received the answer to the complaint. Goldberg promised Rosenberger that she would have the answer by the end of the week, which was 2 days away.

Respondent claims that the same day it contacted an attorney and typed up an answer. The next day, June 25, Respondent alleges the answer was signed, inserted in an envelope addressed to the Regional Director for Region 4, and placed on the table where all outgoing letters are left for posting and mailing each day. Respondent claims it never saw the answer or envelope thereafter and, since no Board agent informed it that the answer had not been received, thought it had been delivered.

We do not believe Respondent's submissions constitute good cause, within the meaning of Sec-

tion 102.20 of the Board's Rules and Regulations, for failure to file a timely answer. In light of the above facts, and Respondent's promise to Board attorney Rosenberger that the answer would be filed in 2 days, it is apparent that Respondent's failure to answer the complaint was the result of its own negligence. Respondent does not even allege that it in fact mailed the answer, rather, it contends only that it left the envelope on a desk where mail is regularly collected. Moreover, at no time did Respondent request permission to file its answer after the 2 days had elapsed. In view of the foregoing, we find that Respondent has offered no valid reasons why the Motion for Summary Judgment should not be granted, and, under the rule cited above, the allegations of the complaint shall be deemed to be admitted to be true and are so found.¹ Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

D'Agata and Carolina are Pennsylvania corporations engaged in the interstate and intrastate transportation of freight and commodities. D'Agata and Carolina at all times material have had common ownership, management, labor policy, and interchange of personnel, and constitute a single integrated business enterprise and a single employer within the meaning of the Act. During the past year, Respondent received gross revenues in excess of \$50,000 for transporting freight from the Commonwealth of Pennsylvania to other States. We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE UNFAIR LABOR PRACTICES

On or about January 26, 1981, Respondent discharged Jay Stuart Goldstein, and at all times since then Respondent has failed and refused, and continues to fail and refuse, to reinstate him to his former or substantially equivalent position of employment, on account of his union activities. We find that, by such conduct, Respondent has violated Section 8(a)(3) and (1) of the Act.

¹ See *Sullivan Magee & Sullivan, Inc.*, 229 NLRB 543 (1977); *Ancorp National Services, Inc., Casco Division*, 202 NLRB 513 (1973).

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section II, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. THE REMEDY

Having found that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

To remedy Respondent's discharge of Jay Stuart Goldstein in violation of Section 8(a)(3) and (1) of the Act, we shall order that Respondent offer immediate and full reinstatement to him to his former job or, if such job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed, and make him whole for any loss of earnings suffered by him because of his unlawful discharge. The backpay shall be computed in accordance with *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest as prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).²

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. D'Agata National Trucking Co. and Carolina Trucking Co. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. By discharging Jay Stuart Goldstein because of his union activities, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Re-

² In accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

lations Board hereby orders that the Respondent, D'Agata National Trucking Co. and Carolina National Trucking Co., Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against employees because of their union activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer Jay Stuart Goldstein immediate and full reinstatement to his former job or, if such job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Jay Stuart Goldstein whole for any loss of earnings he may have suffered due to the discrimination practiced against him as provided in the section of this Decision entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Philadelphia, Pennsylvania, facility, copies of the attached notice marked "Appendix."³ Copies of said notice, on forms provided by the Regional Director for Region 4, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily

posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 4, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT discharge or otherwise discriminate against employees because of their union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer immediate and full reinstatement to Jay Stuart Goldstein to his former job or, if such job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed.

WE WILL make Jay Stuart Goldstein whole, with interest, for any loss of earnings he may have suffered as a result of his unlawful discharge.

D'AGATA NATIONAL TRUCKING CO.
AND CAROLINA NATIONAL TRUCK-
ING CO.

³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."